

## **Minutes**

### **Joint Legislative Oversight Committee on Justice and Public Safety**

**February 9, 2012**

**2:00 p.m. Room 544 LOB**

The Joint Legislative Oversight Committee on Justice and Public Safety was called to order by Representative Jamie Boles at 2:06 p.m. Members present at the meeting were Representative Jamie Boles, Representative Shirley Randleman, Representative Justin Burr, Representative Jim Crawford, Representative John Faircloth, Representative Dan Ingle, Representative Annie Mobley, Representative Timothy Spear, Representative Sarah Stevens, Senator Thom Goolsby, Senator Austin Allran, Senator Harry Brown, Senator Pete Brunstetter, Senator Warren Daniel, Senator Don East, Senator Ed Jones, Senator Ellie Kinnaird, Senator Buck Newton and Senator Dan Soucek. Also present were staff members, Brenda Carter, Kelly Quick, Hal Pell, Susan Sitze, Emily Johnson, Kristine Leggett, John Poteat; Committee Clerks, Kerry Guice, Joseph Kyzer, James White, Sergeant-at-Arms, John Brandon, Bill Bass, Martha Parrish, Billy Fritcher, Ken Kirby and Steve Wilson.

Representative Boles, serving as Chairman of the meeting, welcomed everyone to the meeting and asked if there were any comments from the chairs. Senator Goolsby thanked Representative Boles for serving as co-chair of the committee in light of the resignation of Representative Guice and Representative Randleman too thanked Representative Boles for filling that role.

Chairman Boles turned to John Poteat from fiscal research to follow up from the last meeting on the presentation given by Gregg Stahl from AOC regarding magistrate workload formulas. Mr. Poteat indicated a handout is being made available and would be handed out once copies are made, a copy of which is attached hereto as Exhibit A.

Chairman Boles indicated that there is a quorum present and the adoption of the minutes were in order at this time. Representative Burr moved to adopt the minutes as presented, seconded by Senator Brown. With there being no objections, the minutes were approved.

### **Expunction Laws**

Chairman Boles asked that Brenda Carter from the legislative research division come forward and give an overview of the expunction laws. Ms. Carter presented the members with an overview of these laws as set forth in a power point presentation, a copy of which is attached as Exhibit B for a more complete reference. Chairman Boles asked that questions be held until the end of the presentation unless there was a pressing need to have a question answered prior to the end of her presentation. Ms. Carter indicated to the members that there are two handouts included in the packet, a memorandum which gives a summary of the NC law on expunction of criminal records and a chart which lays basically the same information in a different format. She explained that expunction is a judicial process by which a person can petition to have a criminal record cleared

wherein a person will be restored to the position he or she was in prior to the arrest or convictions. State law outlines the conditions under which that expunction can be granted and also who is eligible for the type of expunctions. North Carolina, as well as other states, has different requirements for expunction and the states are all over the map so it is difficult to say what most states do because they vary greatly, particularly with regard to the types of crimes that can be expunged. North Carolina has put a lot of emphasis on the expunction of records of offenses that occur when a person is under the age of 18 or under the age of 21. This memorandum is set up based on the categories of offenses. When the charges or a person is found not guilty, an expunction can be granted to a person of any age provided that they have not ever been convicted of a felony or misdemeanor before. It must be a first time, and a person is only eligible for one expunction. Even if a person is charged with another crime after an expunction has been granted, they would not be eligible for a second time. There is an exception in the case of identity fraud. If a person steals your identification and are arrested, give your name and you end up with a conviction of which you had absolutely no knowledge or involvement in it, you can get those type of offenses expunged and there is no limit to the number of offenses that can be expunged if that is the circumstance. There are also provisions for expunction when the charges are dismissed and the person is under the age of 21. So, if a person is charged with possession of a controlled substance and those charges are dismissed, the record can be expunged and it also applies to vapors act and if certain toxic vapors and also the drug paraphernalia. Also, if a person is granted a pardon of innocence by the Governor, the record can be expunged in that instance as well. There are several provisions that deal with the expunction of an offense when the person was under age at the time of the offense. This applies to juvenile records as long as the offense committed by the juvenile would not have been a Class A through E felony if committed by an adult. If a person is convicted of a misdemeanor committed under the age of 18, then they may be eligible for an expunction as well. There is a waiting period, as shown on the chart, for a person to apply for an expunction. There are also provisions dealing with misdemeanor possession of alcohol for persons under the age of 21, cyber bullying when a person is under the age of 18, certain gang offenses under the street gang act that was enacted 4 or 5 years ago. If a person is a first offender, this does not apply to persons who are gang leaders, but applies more to people who are engaged in activity but are not coordinators or gang leaders. Recently, in the 2009 session, you enacted a provision that allows the expunction of non-violent felonies committed while under the age of 18. That particular provision has restrictions so that it doesn't apply to any felony that includes assault or any sex offense for which the person would have to be registered.

Chairman Boles interrupted Ms. Carter indicated that members were looking for a chart in the book that is not there. Ms. Carter noted that they should have copies of the reports but not the charts and Chairman Boles indicated that the charts would be provided to members once copies were obtained. Senator Goolsby indicated that the chart is available on the committee's website at the present time.

Ms. Carter continued her presentation indicating that the non-violent felonies are the H and I felonies which are the lower level felons. Another point Ms. Carter made is that before a person can petition for expunction, they would have to complete any type of active sentence, i.e. probation or post release supervision and they also generally would have to show that they have been on good

behavior since the crime was committed. There are also provisions dealing with conditional discharge and expunction for first time drug offenders who are under the age of 21 at the time which generally involves deferred prosecution and then the Judge would place the person on probation and they might have certain conditions under which they would have to abide. There might be drug education or treatment. Then, if those conditions are violated during the term of probation, the Judge can revoke that and then conviction could occur. Once the probation is successfully completed, then the person would be eligible to have the charge dismissed and they could seek to have the record of that expunged. The same process generally applies if a person is actually convicted of an offense, a drug offense they commit under the age of 21 they would be eligible to apply for expunction. These two provisions were changed in the 2009 session. They used to apply only to misdemeanor possession and now they can also apply to felony possession. The only felony that was expugnable previously under the drug provision was possession of less than one ounce of cocaine. The expunction of a larceny conviction after 15 years have elapsed from the date of conviction was enacted about 2 years ago when the statutes were redone. This requires that a person wait at least 15 years since the initial misdemeanor larceny conviction and they are not eligible to have that offense expunged if they have other misdemeanor convictions during that 15 year period or if they have committed a felony. Once a person has committed a crime and they want to seek expunction, they will file a petition with the Clerk of Court in the county in which the conviction occurred or in their home county but, if the Judge grants the conviction then the Clerk of Superior Court is required to notify the Administrative Office of the Court and they have to provide a notice any time a person is granted an expunction or conditional discharge. The Clerk of Superior Court then sends a certified copy of the order to law enforcement agencies, to DMV, if applicable, Division of Adult Correction and the Department of Public Safety and to any other state or local agency that is identified in the person's petition as having a record of the person's arrest or conviction. Once the arresting agency receives a copy of the order, it is required to be forwarded to the SBI who in turn is required to forward it to the FBI. A state agency that gets a certified copy, these days a lot of agencies furnish records to private entities who then make information available electronically, so the General Assembly, several years ago, provided for those kind of instances where a database may be sold to a private entity and then information gets disseminated, somebody gets an expunction, it may still be out there somewhere and they think that it has been expunged and then it might still show up in a background search. So there is a provision that requires agencies that sell information to notify the person or the entities that purchase that information and then those entities are required to clear their records of convictions and if they fail to do so, they may have some civil liability and the law provides for the person to be able to sue those entities and to recover court costs and attorney fees. This is probably one of the most asked about provisions in state law, everybody gets letters from people wanting to know whether they can find a job or employment possibilities. The General Assembly has made a lot of changes in the last few years and I guess it continues to be an active issue.

Chairman Boles thanked Ms. Carter and opened the floor for questions. He then recognized Representative Mobley for a question. She asked about shoplifting charges that youth or young people tend to get involved in or charged with. She noticed that they have charges with drugs under 21 and also noticed that with larceny charges, they have to wait 15 years but there seems to be something not quite right about that in her opinion. She asked Ms. Carter if she could address

that. Ms. Carter acknowledged that she missed juvenile records and indicated that there is a provision that applies to alleged delinquent and undisciplined juveniles, juveniles who are under the age of 16. With this, there are provisions that allow for the expunction of offenses where the petitioner was 16 years of age or younger. Some criminal, most of them, if a person is over 16, they are charged as an adult so they would only qualify for expunction under the provisions that would apply to any adult.

Representative Mobley was recognized for a follow-up. She indicated that she was aware of the juveniles but is still concerned about that youth who is still 16 or 17 but yet under the age of 21 being able to ask for an expunction for shoplifting. I also notice that larceny or conviction or, I guess that could be shoplifting, waiting 15 years is a long time, however, there seems just to be something a little not in line or in kilter, in my opinion, when you can get off on a drug charge, drug offense, or drug offender, yet shop...is someone responding to my question?

Chairman Boles recognized Senator Goolsby to respond to Representative Mobley. Senator Goolsby noted that her concerns were already under the law under 15-1a.5. It is confusing because we have gone over so many different ones under, right now; I have gotten probably hundreds of those done over the years for minor under the age of 18 upon conviction, under GS15a-145 that currently is the law that is any misdemeanor which you commit. Now we have changed it so that if you are over 18, you've got that 15 years you have to wait, and please correct me if I'm wrong, Madame Speaker, but we already have that. We do have that in the law. And the new law says, that just came into effect a few years ago, that if you are of majority, you are at 18 or older, at the time of the misdemeanor larceny conviction, then you have to wait 15 years. I did have a question that it does seem an awfully long time to be branded a thief if you've cleaned up your life and if you've moved on cause that is quite a black mark against you but we do have that under the law right now.

Representative Mobley was recognized for follow-up. I guess I see that here but I am still having a problem with someone who has a drug offense can do it to the age of 21 but not the shoplifting or the misdemeanor larceny. That's what I am having a problem with.

Chairman Boles recognized the presenter, Ms. Carter, to address Representative Mobley's concerns. Ms. Carter indicated that the drug offense provision was actually more than exception where people were concerned about college students who typically might get arrested for drinking or there might be marijuana or something so I think that was the thinking at the time it was enacted but your concern may be legitimate.

Chairman Moore recognized Senator East who remarked that it did not seem quite fair that we make an 18 year old who has been charged with a petty theft wait that many years when we'll allow some non-violent felonies to be expunged after 4 years, gang offenses expunged after 2 years, misdemeanor possession of alcohol while under the age of 21 after 2 years. It just appears to me that 17 – 18 year old kid who steals a little something out of a Wal-Mart store and we make them wait 15 years to have his record expunged, that just seems a little out of line to me. I do get a lot of questions about this and we ought to encourage young folks to learn their lesson, and hopefully they have, when they have gone through the court system, and then they have to wait 15 years to

have their record expunged and I would like for this committee to have a little more thought in that and have a little more conversation about just that issue. I think Senator Goolsby has educated me to some extent as to what is going on with respect to this but I can't agree more with the representative's thoughts on this.

Chairman Boles recognized Senator Kinnaird who commented that legislators write the law and that it might be time for a study that could look at all of this and try to make this and make these things more equal and more sensible and more fair. She suggested that we, as legislators, are the one who can do it and it needs to be done.

Chairman Boles then reminded committee members that have received the chart of the expunctions and recognized Senator Goolsby for comment. Senator Goolsby indicated that he had a few comments regarding the fact that under NC law that if you received an expunction or 15a-145 or 146, you only receive one per life time. He further indicated that they had an incident in Wilmington many years ago where a movie had been shot in Wilmington and the actor, Ben Affleck, was in the local community for filming. After moving on and shooting a movie in Savannah, a local woman who thought Mr. Affleck was stalking her went into the local magistrate's office and took out a self-warrant claiming that Ben Affleck was following her in his car and was going to kill her and had been threatened by him. All of this was completely false, the woman later had her state of mind called into question in the local news however, a warrant for Ben Affleck's arrest was actually taken out and, under our law, for him to have the charges, which were later dismissed, he would have to go through the expunction process to have it expunged and would have used up his one expunction in NC. If she happened to go to another county and be as convincing as she was in New Hanover County and swear out another warrant against Ben Affleck, he would not be able, under our law, to be able to get that charge expunged if it was likewise dismissed. That is a concern to me – both under 15a-145 and 146. If you are a juvenile and you commit a crime and you are found guilty of it or not guilty of it, once you use that, under 145, you can't then, and even if you're innocent and the charge is improperly taken out, we have a self-warrants in this state which are, those of us who are attorneys and handle those cases, highly questionable. All you have to do is go in and put your hand on a Bible and a magistrate, many times will take out, I have defended tons of those cases and tried them out many times. That concerns me that you only get one bite at the apple and if you have got a crazy boyfriend or a crazy girlfriend that goes and takes out multiple charges on different occasions against you, you can look like a real nut, I mean a really dangerous person on the record when none of it is true. We attorneys have to work on those cases a lot of times and try to pull everything into court on one magic day so that we can have all of the charges dismissed on the same day or, now we've actually modified it a little bit within the same year we've changed that and if anything happens outside that time period, it can't be expunged again and that is a real concern that I have across the board. Additionally, misdemeanor larcenies, we already talked about that, 15 years appears way too long once you are over the age of 18 and all the conviction dates have to be either the same or within a one year period. I would like to know from staff how accurate our orders are in North Carolina being carried out by the computer data reporting agencies on records. We've got a big agency down in Wilmington, I think they do a good job but I have heard complaints from defendants who have gone through the expunction process only to go apply for a job, they run it through a private computer database that has not purged their

records and all of a sudden a misdemeanor larceny they were found not guilty of 5 years ago that was expunged, shows up and they don't get a job. I know the computer company is then liable for potentially for defamation but, what kind of job are we doing on that and I would appreciate some feedback and if we could direct some staff perhaps we can talk about that to give us some idea as to how accurate that is with computer agencies as more and more of them come up. And, as they go further and further back in time pulling up records. If found that happen. I had an individual I represented who had a record that popped up from 1959 in another state that just came up on a computer record one day and it was a great concern to him so I think that would be helpful Mr. Chairman.

Chairman Boles recognized Representative Randleman for a comment. She indicated to the committee that there is an expunction study committee that is under way. The committee has met once and Representative Leo Daughtry is the Chair and she will make sure that the minutes from today's meeting, this portion of them, is provided to Representative Daughtry.

Chairman Boles recognized Ms. Carter for a comment who indicated that the expunction Representative Randleman referred to is a House Select Committee and that there are no Senate members on the committee.

Chairman Boles asked for further questions of Ms. Carter and recognized Senator Newton who had a brief comment. He just wanted to state for the record that he shares Senator Goolsby's comments 100% and he thinks it is ridiculous how easy it is that someone can get charged, have nothing to do with something sometimes, and then be forced to use their one expunction in a lifetime. That can happen sometime easily again some other time in life and, on a personal note, I can tell you sometimes you pay a price for that.

Chairman Boles recognized Representative Faircloth who commented that the value of deterrents with regard to society and its young people depends, to a great extent, on how well those young people understand and support the laws that we try to explain to them. He would challenge any of the members to take this chart and go into a group of 18 – 19 year olds who are in a civics class, or go into a Sunday school of 70 – 80 year olds and explain this chart and defend its rationality. It has a lot of holes in it and there needs to be some changes made and when we have a society, I can give you one example of a situation where a federal narcotics charge was brought against a young man, a college student, he served his federal time, then able later on to become a North Carolina District Court Judge and a very good judge. If it had been under our North Carolina laws, he would have had a lot more trouble making a good life for himself. Particularly, with dismissals when charges aren't warranted as has been mentioned so I really urge, on behalf of the young people, and the people who need to go to work after they have made a mistake that we look closely at this.

### **Credit Card Payments for Fines and Court Costs**

Chairman Boles asked for other questions and comments and, there being none, introduced Gregg Stahl, Senior Deputy Director with the Administrative Office of the Courts for a presentation on Credit Card Payments for Fines and Court Costs. Mr. Stahl came forward to give a presentation on such, a copy of which is attached as Exhibit C for a more complete reference to his presentation. Mr. Stahl thanked everyone for allowing him to make his presentation. He indicated that his staff

had spent a great deal of time on the General Statutes of North Carolina as they pertain to credit card transactions in state government. They also talked to the State Controller and their expertise although, as a judicial department they are exempt from working with them however, they like their expertise so they take advantage of what they have done in this area. And, finally, they talked to some credit card provider vendors who actually service gateways; provide equipment and such so that they can get as good an idea of how this could work if it could work. Mr. Stahl began with what they are doing today and that there are two types of credit card uses. The first is pay NC ticket which is a "card not present" transaction. This is an over the internet, on the web, transaction in order to pay waivable offenses, cases in which you have received primarily a traffic citation and you have decided you are going to waive and plead guilty and you have the convenience of using the web to do so. A third party vendor provides a secure website and, as you are aware, fees that are paid to the court are distributed to a number of other parties. There is the general fund but then there is also facility fees, retirement fund, fines to the school boards, so monies are collected and then distributed as normally the case. There is a front end application that allows you to look up your application, verify it is yours and start the process of waiving and paying the third party vendor. NIC actually takes the transaction, processes it and then send the money to the Clerk of Court who actually has the bank accounts that are receiving the dollars. This has been a good effort for North Carolina, for Clerks of Court. We have collected \$32,147,943.00 in less than a year through this process. 330 citations per day are now occurring, \$65,000.00. We have taken in a total of 167,000 citations, that is nearly 22% of all waivable offenses. We generally know how much time the Clerk says it takes to process one of these face to face at a cashier's desk and, from this; we have saved about 7,600 hours of staff time because there is no touching of this now. You are going to get an e-citation from the officer that is pushed to our system and from that system you can go on, waive and pay. A human has not touched this from beginning to end. We also have a pilot online civil e-filing which is on hold, but a part of it, using the same vendor, when a civil case is filed in Chowan, Davidson or Wake County, the fees are paid electronically also. Most of these are not credit card transactions; these will be an e-check because the transaction is just from the attorney's bank account. You will also see that there is not very big numbers, civil e-filing has not been a particularly big hit in the pilot counties and this project is on hold due to budget cuts. The merchant point of sale, card present, credit card transaction is processed at the Clerk of Court's office by the cashier. From the merchant, to the acquiring bank, the authorization is made, the approval code is sent, the authorization request is sent and then it goes back and, they are batched at the end of the day and the money is passed through. Mr. Stahl then reviewed what NC law says in regard to government agencies doing credit card transactions. Electronic payments, including credit cards, are defined and the regulations which are required to collect such payments. The Administrative Office of the Courts can also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies. He further explained that a condition of payment by electronic payment by credit card is received by the appropriate state agency of the full amount of the account receivable owed to the state agency – a debtor who pays by electronic payment may be required to pay any fee or charge associated with the use of electronic payment. He indicated that on any credit card payment that there is going to be anywhere from 1 – 3/5% charge discount applied. Statute says we have to get full amount however, it is our interpretation, that on a bill of cost, on a fee, the expectation that it is paid in full – if you pay with a credit card on a bill of cost, you have not paid 100% of what the bill of cost order

is – you’ve paid a percentage of that and thus the bill of cost has not been fulfilled. Fees associated with processing electronic payments may be paid out of the general fund so we can offset that 3% that we don’t get with an appropriation from you to make it whole again if the payment of the fee by the state is economically beneficial to the state and the payment of the fee by the state has been approved by the state controller. He did point out that the practice of charging transaction fees shall not conflict with any merchant card association rules meaning we must comply with whatever the card rules are, particularly in charging transaction fees. Fees under the statutes pertain only to obtaining electronic access which includes the internet and voice response which address the rules for pay NC ticket and not point of sale or face to face charging of fees. The two “big cards” have policy on what type of agreement and what you can do as a merchant in charging. Both basically say you may not impose any surcharges on a transaction; however, you may offer a discount for cash when making point of sale, or face to face, transactions. Any merchant who takes cards must abide by this agreement. However, as a government agency, some years back, MasterCard and American Express, changed their policy on point of sale fees because they saw they were losing out on government transactions, particularly payment of tuition at state run colleges and universities so they have loosened that and say you may collect a fee or surcharge and it can either be fixed or a percentage. Visa responded by saying that they would not do that but they would do a tax program so that the Department of Revenue can charge a fee but, because “our” fees are not taxes, we cannot impose these fees. In addition to the discount fee (1 – 3.5%), credit card transactions may also be subject to an interchange fee. The discount rate varies based on the user agreement with the card company and the merchant has no way of knowing what this rate is prior to accepting the card. In addition to these fees, credit card equipment and access fees are estimated to be from \$100.00 - \$200.00 per month per site accepting the credit card. This pays for the swipe equipment, interchange fee, and also the DSL line required to operate this equipment. He also pointed out that courts do not have standard telephone lines anywhere anymore since we went to a newer internet based system. For example, a typical seatbelt infraction is a \$25.00 fine, \$135.00 costs totaling \$161.00. The state would receive \$157.78 and would necessitate a \$3.22 appropriation or “add-on” to that credit card as a fee in order to make the transaction whole in order to meet the statute and meet the bill or cost. Other examples were also given by Mr. Stahl. The total court fees and fines that could be subject to credit card payments total \$360,000,000.00. Of this amount, the state would receive \$352.8 million, based on a 2% discount fee however, after talking to vendors; we would probably be more along the 3% figure. Using the 2%, we would be asking for a \$7.2 million appropriation or in additional fees to cover these costs. He also talked about the cost of allowing credit cards for payment of restitution costs and filing fees for small claims, district and superior court. Again, in summary, Mr. Stahl pointed out that state law requires as a condition for electronic payment that the agency is to receive full payment for the amount owed and when a judge gives you a bill of cost, the expectation is that it is paid in full and paying by credit card does not pay it in full. Since VISA does not allow for the charging of point of sale transaction fees, you could charge a pretty high flat fee for everyone using a credit card other than VISA so that they pay the VISA people who you cannot charge. State law does provide for use of general fund monies to offset the cost of any fee charged provided it is economically feasible to do so. Another thing that they have run into that complicates this because we are government and not like a standard merchant, perhaps in your time of using credit cards you’ve had a dispute. Credit cards will allow disputes at any time for any reason, called a chargeback. One of our issues right now on our web-based is that we are

finding a small number of people who pay, and unless it is fraud, there are no chargebacks per the agreement with our vendor. However, most card companies are very open on chargebacks so we have a bunch of chargebacks because we have people who are satisfying their criminal obligations by paying with a credit card then filing the chargeback and we don't have a mechanism to reopen a citation that has been closed to go get you and make you come to court. Therefore these chargebacks are an issue and unless it is fraud we really don't have a claim and these chargebacks are becoming an issue. In the House, you have HB 626 which is currently in Rules and it says that you can't charge surcharges on any type of credit card payments at point of sale. So you have pending legislation that would prohibit point of sale charges in NC. I think there about 10 states that do not allow surcharges on credit cards on point of sale.

Chairman Boles thanked Mr. Stahl and asked for questions from the members. He recognized Senator Newton who asked Mr. Stahl about phone lines in the clerk's offices and DSL systems and wanted to know how we deal with that. Mr. Stahl answered that we are using data circuits, not old style analog twisted pair circuits anymore. He indicated that we have modernized and apparently the credit card people have not and they are still using either a DSL or a standard analog telephone line so we would have to install back to their technology level.

Chairman Boles recognized Senator Goolsby for a question. Senator Goolsby indicated that in his business which is a large component of criminal defense practice has been taking credit cards for a number of years and the people he later represents that go into the court system have, for the last 2 years, he has had zero chargebacks and no fraud and I do represent the folks that do go into that system. I don't know if that means I am representing a lot of innocent people or if they like their legal services or just what the reason is but it has worked well for me. I spent a little time working on this issue talking to my clerks – went down into the basement of the New Hanover County courthouse and said, because I was under the misimpression that it was not simply, that you could pay anything online. I did not know until I really started investigating this that it was only traffic tickets that you're pleading guilty to. If there was anything we didn't take online I would almost wish they were those because the last thing I want people to necessarily do is just pay off the speeding ticket and not maybe go to driving school and learn the problems of speeding and all the other things and maybe be improved drivers. I don't think the state runs our ticketing system as just a money collection effort to help the general fund. I hope that is not the reason we passed those laws. I know I have clients who sometimes feel that way. I assure them that we do not have a certain number of tickets law enforcement has to issue every year to justify their jobs but having the system set up that only allows for that and encourages that – I have clients all the time that wonder why their insurance went up because they had a speeding ticket a few weeks ago and took care of it online only to find out they screwed themselves by doing exactly that and I would much rather them have gone to court, have signed up for a driver's ed program and improved their driving rather than just paid the money. They still pay it after they do the driving course but they would just be a better driver maybe because of that. Now I went down to the Clerk's office and I asked about credit cards – what would credit cards do for you? The thing I heard the most that I thought was the most insightful, one of my clerks told me that we actually spend 40% of our time taking money, cash, from probationers. Every probationer has to come in here month and pay this money. I asked if they had to actually come there and she said well, they can get a certified cashier's check

but most of them don't. They take off work, drive down to the courthouse, they show up, they walk down and they pay their money. She said 30% of their time in the clerk's office with 2 full time clerks running that desk is spent taking cash payments from probationers. I commented to her that it would be nice if they could pay by credit card. That would allow us to do with only 1.1 clerks instead of two and I wish we had heard from the Administrative Office of the Courts the savings that we would actually have from doing this. All we have heard is the extra cost from instituting credit cards. I know Senator Brown in your business, credit cards are pretty beneficial. They are definitely beneficial in my business. They not only assure my payment, I get the payment up front and I don't have to worry about them coming up with it, in fact even when the people don't have the money on them, they can pay by credit card and pay it back later. That is why everybody from Wal-Mart to your local five and dime and grocery store take those. They are convenient, most everybody has one and they would save apparently, about 40% of the time in my clerk's office just dealing with probationers alone coming in and paying. In addition to that, the increased payments we would get, I wish we had heard something from AOC as to what their probability would be in people actually paying. I have clients all the time who get in trouble because they have not been able to come up with the money and they have to end up paying \$20.00 more to get it continued to get it continued for 30 more days and there are plenty of my judges that won't give them a payment plan but put them on probation if they can't pay that day. Now we have a probation cost, somebody seeing a probation officer. Going through the intake there and all the other money that we deal with. Also in our clerk's office, I encourage every committee member here, just go down and verify what I am saying, to your clerk's office the next time you have a speeding ticket. Walk down there and ask them indeed, how many checks they get in from people unwittingly sending personal checks that our clerks then open and say oops, we don't take personal checks. They have to then turn around and write a letter, address it back to the person, put their case in a hold status or issue a show cause order or do whatever else they have to because the money has not been paid and send the darn check back to them to try and get more money again. How many millions of dollars do we not collect every year because we do not take credit cards and we are talking about 1% probably for a state the size of North Carolina to be able to negotiate in costs. One to two to three percent? I originally started at 3% in my business - I think we have got it down to about 2% now. Again, when we add up all the costs and the things we do in just the sheer convenience for North Carolina citizens to pay these things and to get the money in, I think what we are talking about here pales in comparison to a couple of percent. We just jacked up all these fees this last year considerably in order to help balance our budget and do the things we had to do. How much more could we get in if we went to a system that every other business that I know currently does. It floors me that only the state, in collecting tens of millions of dollars, would throw road blocks in actually getting more money and making it easier and to think about probationers having to quit work early and the thousands of work hours lost in money these people who are already having a hard time, just to get down and pay their court fees every month. It seems absolutely ridiculous and if we have to make a change in the law, and I called up when Mr. Stahl told us about that surcharge on credit cards prohibited, actually two of our committee members, Representative Mobley and Representative Spear, are both on that committee. Maybe you all could look at this bill and make sure we don't put the screws to our state in being able to actually being able to implement this program. But it only makes sense to me that we would seriously look at doing what the rest of private business has done across this state and make it easier on these people to pay their court fees. It's maddening - you go

into the courthouse and you see these crazy lines of people standing there. It's the only game in town where you got to walk in with cash or a certified check or they run you away and hope you might come back some day and pay. Or, we send a sheriff out to arrest you. More costs for the system and put you on another court date, more clerk time, more District Attorney time, more lawyer time. I mean, it's insane what we do. And we can't use credit cards like everybody else; it is just beyond me folks. I think we need to do whatever needs to be done to make this happen and to come in to this century.

Chairman Boles recognized Senator Jones; I also have Representative Stevens, Senator East and Representative Ingle. Senator Jones asked at what age do you have a person, at what age, is there an age to do that. Say, my young daughter got a ticket, she paid it off with a credit card and the adult would not know anything about it. Is this...Gregg Stahl of AOC responded by indicating that would be a likely scenario. His thought is that in NC, in order to get a credit card you have to be 18 but you could be on someone else's credit card as a signature. For example, both of his children had credit cards at younger ages than 18, it was just billed to him.

Senator Jones followed up by asking if the name on the credit card would have to be the same name as that of the citation. Mr. Stahl responded by answering no.

Chairman Boles commented that he supposed what was being asked was could Grandmother and Grandfather pay off the grandchild's bill. Senator Jones commented that if someone out there used a false name and you go and pay that off with a credit card, someone else's, and you have twice the problems you're having then. Trying to get the correct person's name and then the person's name that is on the credit card that said I didn't know whether it is stolen or whatever. Mr. Stahl interjected that that would be fraudulent so the chargeback should be allowed. And the same thing could be done in the other; it's just easier on the credit card when it is not face to face. Somebody picks up somebody else's credit card and fraudulently uses it, slips mom's out of the wallet and uses it online so mom doesn't know there was a ticket.

Chairman Boles recognized Representative Stevens for a question. She commented that she was looking at Slide 4 and in the experimental program that we did where we collected \$32 million dollars, 330 citations. Now looking at that, \$65,300 was collected per day. If you multiply the fee, the 2%, not counting the \$100.00 - \$200.00 per site fee, I came up with \$1,300.00 per day and if we are, and we're replacing what? It looked 7,600 hours would be 4 clerks per year, is that right? Maybe 3, 4 clerks per year. We are not paying our clerk's that much are we? I mean, isn't their time and their job worth not going to the credit card site? I just don't see it as a profitable venture to go to the credit cards. You are only going to be saving 4 people statewide, hour wise, for what you have here, and you are going to be paying \$1,300.00 a day to the credit card company. Mr. Stahl stated that they felt like the online was a good way to go. That was suggested by the Clerk in Mecklenburg County that we do online. That we start with charge cards and go to online because it takes nobody touching it so nobody in the Clerk's office touches this one. So if these people had walked up and paid it off, or the option on a waivable is you mail a check in, you are then going to open the mail, you are going to send that check to the cashier, you are going to marry that up with and satisfy the criminal charge. You've got two systems to deal with. So you don't have anybody in front of you, but there is still time to process that as if it were a face to face. There is no time here.

Representative Stevens was recognized for a follow-up. I understood that there was no time here; you anticipated that it saved 7,600 hours just to do this. Mr. Stahl noted that is what their estimate would be if they had to process it by mail or by face to face. Representative Stevens asked if the 2% would be on the 65,300 per day, is that right? The 2% credit card surcharge. Do you have actual numbers on the surcharges you paid on this? Mr. Stahl answered that they have a vendor who charges a convenience fee. We get full amount on anything paid. The convenience fee varies depending upon how much, but it is a flat fee plus a percentage, plus a dollar. Vendor makes a dollar, the rest of it goes to fulfill the cost of the bill of cost so that if it is a 3% discount or a 2% discount the state gets the full amount from the vendor, and the vendor gets a dollar and pays their costs.

Chairman Boles recognized Representative Stevens for follow-up. Representative Stevens asked Mr. Stahl if he knew exactly what it costs us, the discount fee, the vendor fee, the machines, whatever, to collect \$65,300.00 per day. What was the cost per day? Mr. Stahl answered that there is no cost. He explained that we have a vendor and the vendor absorbs all of the cost and that is why we went to a three party vendor. This system only costs us the time our IT group spent to write the upfront application. Otherwise, the vendor is absorbing all of the costs. Representative Stevens followed up by noting that if we go to a statewide system there would be a fee associated with that. Mr. Stahl explained that if you do point of sale, face to face, allow somebody to walk in and use their credit card, then that's where the discount fee and the charges apply. It is pretty clear everybody can apply a convenience charge to an online transaction. That is real clear, that is real easy, that is what this is based upon. The path of least resistance plus the fact that nobody touches; it is a savings all the way around. Point of sale is still going to require the cashier to receive it, swipe it, satisfy ASIS, and give the receipt in the financial system. The problem then becomes, the law says you have to recoup the full amount and there is only two ways to do that. You either give us an appropriation and we match it or you charge a surcharge or fee and the problem with that is VISA won't allow it.

Chairman Boles recognized Senator East who asked Mr. Stahl about the seat belt ticket with a \$25.00 fine and the costs were \$140.00 or something like that and where those dollars go. Mr. Stahl noted he could not give the full break down but there is a general court of justice fee in that that goes to the General Fund, there is a fee that goes to law enforcement retirement, there is a facility fee, either city or county, where the courthouse is, there is a state service fee, law enforcement service fee, there is a state facility fee and there is the fine. Senator East was recognized for follow up and asked if all of those fees come out of the cost of court portion or the fine portion. Mr. Stahl replied by stated that what you have done in 7a is detailed how much each one of those are and then they add up to a nice round number so it makes it a little bit easier for the cashiers to make change, and then you tack a fine on it and fine goes to the school board, everything else comes in and we have an automated system that disburses the money as per the statute.

Chairman Boles added that he would be curious if Mr. Stahl could have the amounts broken down at the next meeting it would be helpful. John Poteat from the NCGA fiscal research division noted that they had the information available and would provide that information to the members after the meeting. Chairman Boles asked that the information be e-mailed to each member prior to the next meeting.

Chairman Boles recognized Senator East again for a question. Senator East asked Mr. Stahl if a red light camera infraction could be paid by a credit card. Mr. Stahl answered that “we” don’t do red light cameras. He further indicated that it would be a city ordinance violation so it would be paid to the city if ...well, I think ya’ll outlawed those.

Senator East indicated that they actually did outlaw them in the Senate but that the House has not done so. But, my question is, and maybe you don’t know. Mr. Stahl did state that he didn’t know but that he had paid his parking tickets in downtown Raleigh with a credit card. Senator East indicated that he was just trying to figure out how many fees were coming out of the red light cameras.

Chairman Boles recognized Representative Ingle who thanked Mr. Stahl for his presentation and noted that he was very interested in the last part of it in terms of people that are gaming the system who have realized that they can come back and cancel and a later time. How common is that? Mr. Stahl answered that he did not know. The vendor wants to close out their year and they say they have a bunch of chargebacks and we say okay we need to see the detail on the chargebacks and we have not yet gotten the detail. So we have not paid them – we have not paid any chargebacks. Our vendor just says they have them and they want their money back.

Representative Ingle was recognized for follow-up and asked Mr. Stahl if it was more of a civil matter for the state in terms of collecting what is owed to them and wondered if there has been any investigations of credit card fraud or false pretense to your knowledge arising out of one of those situations. Mr. Stahl answered that there had not yet been any. He further stated that we are about ten months into this and he doesn’t think there are a lot of them or the vendor would be more hot on us in giving them their money back.

Chairman Boles recognized Senator Allran who commented that if people pay off speeding tickets with credit cards and it has a really bad impact on their insurance then that doesn’t help anybody and if we expand this to let people, as Senator Goolsby was suggesting, people paying off their probation payments or child support or something like that, these are people who a lot of times don’t have any money. If they start making these type of payments on credit cards at 25% interest or whatever, they are going to be going from bad to worse in their own lives so that is the problem I have.

Chairman Boles recognized Senator Brown who commented that Senator Goolsby was correct with his explanation earlier. I can just tell you in district court that it is a madhouse in district court in some counties today. Anything that could speed that process up, I think has got to be good for the state in the long run. Nobody carries cash in their pockets anymore. It is a burden for most people to go to an ATM machine and try to get cash or just come up with a way to pay these tickets. Most of them have debit cards in their pocket and I think it is the way to do business today. If I had collect cash at my service window for every transaction I had in my service department, it would be a disaster. I think we’ve got to work through the issues maybe but I think we need to move forward and find a way to make this happen just for the convenience of the customer and that is what they are, they are customers.

Chairman Boles recognized Senator Jones for a question and asked about many towns that issued citations and allowed citizens to pay their tickets and not be issued insurance points and not have to go through this that and the other but if you don't pay it they would turn it into a state citation where you will get points by going to court with us being the collection agent at that time if you don't pay off the local citation through the city. Is that audited anywhere how much our towns are getting from speeding violations and what we are losing as a state. I'm going back to what Representative Stevens or Representative Spear is saying that these court costs go towards, officers fee and retirement and so forth, are we getting shortchanged on this? Mr. Stahl answered by indicating the only local speeding violation ordinances were in the City of Charlotte where they were using cameras to catch speeders and it was the same concept as the red light cameras, all of which is along the same line as parking tickets so it becomes a city ordinance violation and it is the car that is cited and not the individual because it is a picture. I am not sure that wasn't also caught up in the same problem with the red light cameras that the school board sued because they said that was fine so anything that was separate from the cost of running the program should go to the school boards and has pretty much killed that. But we do not know and have no idea how much Charlotte was collecting when they were doing it. Senator Jones followed up by saying that most people know that most towns are doing this. Have a fee that you pay them and you don't get, it doesn't turn into a state citation where you get the points. Again, I don't know whether this is being audited or not from these local agencies and I wasn't aware that I was the only one that knew this.

Chairman Boles recognized Senator Allran asked if there was some way people could use a debit card instead of a credit card or if the use could be restricted to debit cards instead of credit cards. Mr. Stahl answered that we could restrict it to anything whether it be an e-check, debit card or credit card. I didn't go through debit cards, there are fees associated with debit cards. They are less than, but you are still not collecting 100%. We understood, we were told credit cards so we didn't do debit, but part of the issue, part of what is being said here today is you can't afford to pay. Well, if you can't afford to pay, a debit probably is not going to do you any good because if you don't have any money in your checking account, debit card hits immediately. Senator Allran followed up by asking about not having the money to pay and you use a credit card, then you get into that credit card debt, 25% or whatever the interest rate is when you don't pay the credit cards. So, how does that exactly, particularly help society if you are just going from one horrible problem they are in to just getting into credit card debt, I mean how are we making things better by giving them another problem. Mr. Stahl stated that if you are an individual, and I think by policy, by your statutes, you have basically said, if you don't pay, two things are going to happen to you on a typical waivable infraction. We are going to put you in jail, we're gonna take your driver's license. So what is good is, if you find some other way to pay, like a high interest credit card, you're not gonna go to jail, you're not gonna get your driver's license taken, so therefore, you only have to deal with the nonpayment issue which is between you and your credit card people, not you and the courts. It may eventually get to the courts in the form of a civil suit but as far as the payments and the failure to comply and losing your driver's license. All of the good practices that states are supposed to do to encourage people to comply – no we are about compliance cause that is what you tell us, you've got to comply with the bill of costs and the judgment. We have a little better than 90% compliance rate with this type of offenses without credit cards. So, the reason they comply is that if they don't

they are going to go get picked up and they may lose their driver's license so to weigh the two out, you make your choice. Senator Allran was recognized for follow up and indicated that on the side of their courthouse in Newton there is an ATM machine. I know that because when I go there it seems I never have the money for the register of deeds office or whatever. So I have to run around there and get the money. But, are we saying that we don't have these ATM machines in most of the courthouses? Mr. Stahl answered that they surveyed the clerks. About 90% of them responded to the survey and only about ¼ of them have an ATM. When asked why not, the majority said nobody had ever thought about it. There is also, some said, well there's one down the street, there's a bank across the street and such.

Chairman Boles recognized Senator Newton who commented on his concern about Senator Allran's concern about cards. While I understand his concern, I've watched a lot of clients struggling how to pay for things and what was going to happen but I would suggest that if a person has a credit card and they have a credit limit on their credit card, the fact that the courthouse will or won't take a credit card probably isn't going to change their calculation. I have had many clients go and get cash advances on their credit cards to pay for things, probation fees, etc. So, the individual consumer, if I can call them a consumer, they are going to make the decision about how they are going to best be able to pay for this or not. Really, as I see it, how it affects us, if what kind of convenience are we going to provide and how is that going to help us streamline our courthouse and our court system and what if anything is it going to cost us.

Chairman Boles asked for any other questions. Mr. Stahl added, in response to something the Senator said, I cannot model increased payments due to any type of payment form. There is just no way for us to look at and say of those who didn't pay, had they had a credit card, would they have paid. Again, because you all have enacted best practices in this state for failure to comply, failure to appear and taking driver's licenses, so the typical system is gonna allow a pay later, if they can't pay and they are supposed to come back and pay. I can't model those pay later as to whether a credit card would have let them pay now. There's not a way for me to estimate that which we would have done if we thought there was a reasonable, realistic way to do that.

Chairman Boles thanked Mr. Stahl and recognized Senator Goolsby who commented that he would be happy to make New Hanover County a volunteer for a pilot program. I think it would work very well. I think Senator Brown likes Onslow County also as one and additionally, Senator Allran, your concern about credit cards and people being tasked wrong as Senator Newton said, the money you pay on a cash back transaction, where you get the cash back to then go pay is a whole lot more, as far as interest and everything goes, that is a real kicker to these people. I just know that my own experience in collecting fees in my law firm when I started taking credit cards, the ability for people to pay went up substantially and we also, if you can't pay that day in court, the state will give you thirty days or so to pay but it is automatically another \$20.00. Or, the Judge will put you on probation and give you a probation schedule with which you can pay. All of those are expensive and time consuming and, like I said, I'd be happy to have New Hanover County in that pilot program Mr. Chairman.

Chairman Boles asked Representative Spear if last year we didn't raise the scheduling payment if a person wanted to make monthly payments. Didn't we raise that fee last year? Representative Spear

acknowledged that a fee was created and commented that we created a fee, the credit card company didn't create it, we did.

### **Legal Aid**

Chairman Boles introduced Martin Brinkley, President of the NC Bar Association who will be giving a presentation on Legal Aid. He also indicated that the final report on consolidation from Barbara Baldwin, Assistant State Budget Director, will be moved to the next meeting if there are no objections from the committee.

Mr. Brinkley came forward to take the floor and gave a power point presentation; a copy marked Exhibit D which is attached hereto for a more complete description of the presentation. After introducing himself, he noted that he and Senator Goolsby were in law school together and acknowledged the generous contributions to legal services that Senator Goolsby's firm provides. He recognized that Senator Newton, Senator Kinnaird, Senator Allran, Senator Brunstetter are all part of this. He also acknowledged that Representative Stevens was a recipient of the bar association citizen lawyer award in Asheville last year at their convention. He told the committee that he is really a business lawyer whose clients are companies, employers, family owned businesses, publicly traded companies who employ tens of thousands of North Carolinians mostly in eastern and central North Carolina. He will tell us why he cares about legal aid and hopes that when he is done, the committee will as well. Mr. Brinkley told a story about a 77 year old lady named Doris and her experience with a moving company when she moved from Florida to North Carolina which was not a good experience. Because of her bad experience, she had to enlist the help of legal aid. He told this story because it illustrates the classic example of the kind of person that receives help from the legal aid organizations of this state. It is typically a hard-working, honest person living on a fixed or low income doing the best they can with what they have and they don't have the change to get the kind of help they need when they get in a tight situation. The clients of legal aid are working families, they are children, they are the elderly, 75% of the clients are women, their typical household income is somewhere in the range of \$12,000.00. Civil legal aid basically means providing free legal services to low income people in non-criminal cases. This does not mean criminal cases – that is handled separately through the funding that you allocate to the Indigent Defense Services Commission. These are civil cases and they involve loss of home, family, livelihood, personal safety. Civil legal programs do not handle tort cases generally, they do not handle medical malpractice cases, they don't handle personal injury cases. We have three legal aid programs in North Carolina. The largest is called Legal Aid of North Carolina and it covers all 100 counties through twenty offices. The other two programs are Legal Services of the Southern Piedmont which is based in Charlotte and covers the greater Charlotte metro area and Pisgah Legal Services which is based in Buncombe County and covers Buncombe and several surrounding counties. The executive directors of all of these programs and some other members of their staffs are here today, George Housen is the executive director of LANC, Ken Shore is the executive director of Legal Services of the Southern Piedmont and Jim Barrett is the executive director of Pisgah Legal Services. Basically our most vulnerable citizens are eligible to be served by legal services. General legal aid recipients are people who are living at 125% or less of what is called the federal poverty level. Basically what that means is for an individual an annual income of \$14,000.00 a year or less or for a family of four, an annual income of \$29,000.00 or less. Those are the eligible

clients. About 22% of our state's population are eligible for legal aid, about 2 million people. 34% of our children are eligible and 18% of all senior citizens. There has been a 15% increase in the portion of population that is eligible for civil legal services since the recession began in 2008. There is a 60% increase in eligible citizens from 200 – 2010. Legal aid helps victims of domestic violence escape abuse, it helps consumers fight scams, particularly seniors, it preserves homes, it keeps people in their homes and off of the streets, it improves household income, it establishes eligibility for things like medical care and other federal programs. My association, the NC Bar Association recruits and trains private attorneys who give their time, give their money, give their resources, as Senator Goolsby does, to increase access and to reduce the overall costs of legal services. The Council for Women reports that there are nearly 60,000 victims of Domestic Violence who have been served by legal aid in the last three years. The Department of Justice reports that there is an average of more than 100 domestic violence related homicides each year from 2008 – 2010. Legal aid programs work with these victims and their children by enforcing compliance with protective orders, helping victims become financially independent from their abusers. Foreclosure is a very significant area of activity for our legal services programs. Last year in NC there were between 2,000 and 3,000 homes threatened by foreclosure every month. Legal Aid of NC, just one of the service providers, but the largest, had their foreclosure caseload more than double from 2008 – 2011. This is important because keeping people in their homes keeps them paying property taxes, supporting their local government, supporting school systems, courthouses and such which is essential. Legal aid programs bring Federal dollars back to NC. Our programs have received many types of federal benefits for eligible clients. Particularly the earned income tax credit. We have billions of dollars, about 2 billion, that is attributable to NC tax payers in 2011 alone and our legal services programs have secured several millions of those dollars to come back to NC from citizens who owed it. Legal aid helps lawyers render free legal service to our citizens. There are lawyers in this state who are doing thousands of hours' worth of pro bono work every single year. It is important that we have resources to turn to when have a case in an area of the law that we may not be familiar with. Being able to go to the local legal aid office and get some tutoring is essential for these lawyers. The way that I get connected to my client is through the legal services community. Legal services programs do not clog our courts up despite the myth to the contrary. Legal services programs resolve more than 70% of the cases that they take in outside of court. Many of these cases are not hard to resolve, you can do it with a phone call, you can do it with a letter. That is a tremendous to our court system. We keep the number of pro se litigants down. It is still burgeoning but legal services programs keep there being even more of those litigants going into court. Legal aid only takes the most meritorious cases that come in the door and it successfully resolves 90% of those in favor of the clients who come in. Legal aid is facing profound funding shortfalls. United Way funding has gone down by 14%, federal funding is down by 18%, state funding by 20%, and funding from IOLTA, which has to do with money that sits in lawyers trust accounts is way down, mainly because the real estate market is slowed. The need is up and the funding is down. Those funding cuts LANC, the largest of these legal aid providers to close 4 offices, Boone, Asheville, Henderson and Smithfield in August and September of last year because of the program's inability to stay open. That has affected thousands of households who were being served out of those offices. Many of them are being rerouted to other offices. We are doing the best that we can to meet the need but it is a good situation. Restoring the funding that we had to cut and I know you had to cut, would enable 4,000 – 5,000 households to be served once again.

Chairman Boles recognized Senator Daniel for a question who asked Mr. Brinkley how many of those 30 people were attorneys. Mr. Brinkley asked which employees and Senator Daniels indicated the 30 people that he had said were laid off. He asked how many were administrative and how many were attorneys. Chairman Boles recognized George Housen, Executive Director of Legal Aid of NC, who indicated that there were 9 attorneys out of those 30 laid off. Senator Kinnaird was recognized by Chairman Boles who pointed out that there must have been a lot of people who were not actually attorneys but did a lot of the paperwork and a lot of the sitting in the courthouse and that sort of thing. She asked if they were not also let go. Mr. Housen answered that there were 30 positions eliminated and 9 of those were attorneys and 21 support staff which included paralegals who actually did case handling and administrative support. Our paralegals actually take administrative cases, write the briefs, represent the clients, so they do a little more than the average paralegal in a local office. Senator Kinnaird followed up with a comment that when we think of administrative layoffs we think of vice-presidents and such but these are actually working people who carried out a large bulk of the work. When you say administrative it's a little misleading and I think we have to realize that they probably carry the bulk of the work day to day in these offices.

Chairman Boles recognized Representative Spear who asked if legal aid was authorized to charge any kind of fee for their services. Specifically, let's say if you are representing a client, maybe in a small claims matter and the ruling is favorable to your client, are you eligible to ask for attorney fees as part of the cost on that or if it's in the district court that you can actually determine what your legal representation is been valued at and get some reimbursement for that? Mr. Brinkley replied that in the cases he has handled over the years he has never sought attorney's fees or have never done anything like that and my impression is that most outside lawyers who take on pro bono work do not do that but maybe Mr. Housen can address it more directly. Chairman Boles recognized Mr. Housen from Legal Aid of NC. He responded to Representative Spear by indicating that until December 2009 they were federally prohibited from asking for attorney fees in our cases. As a general practice though, unless we litigate substantially and incur extensive fees, we typically don't go after them. In many cases, in landlord tenant cases, many of the landlords who are on the opposite side of this are a couple of mortgage payments away from being our clients and being tenants themselves so we try not to take advantage of that fact.

Representative Spear was recognized for follow up. He commented that as Clerk of Court in his county for 24 years, he had many opportunities to refer people to legal aid and he just complimented legal aid for the job the people that he referred to them. Most of the time, a phone call or a letter usually, the other side is not represented and when you get that letter or that phone call from that attorney, the person releases the personal property they were holding in the house or they turn the heat off or water off because he or she is a month behind in rent, and usually legal aid is able to help that situation and do a good job.

Chairman Boles recognized Senator Daniel who asked what the rationale was for closing 3 offices in western North Carolina out of the four that were closed. Mr. Brinkley stated that he may have said Hendersonville but he meant Henderson, so that there were two in the mountains and I'll let Mr. Housen correct me, but I believe, because we have an independent or another legal services provider which is Pisgah Legal Services in Buncombe County, it was felt that the Asheville office of LANC could be eliminated because there is already a provider there and that it wasn't that there was

duplicative services, but that would be one that could be one let go and Mr. Housen is nodding at me that yes, that is the answer.

Chairman Boles recognized Representative Faircloth who asked, for the benefit of the committee members who are not attorneys, if the attorneys could give them an idea of how personal pro bono works. Just without involving legal aid. How does that work for a typical attorney's situation, is that done through some connections within the community or is it just personal decisions?

Chairman Boles asked if Representative Faircloth was directing that question to Senator Newton and Senator Newton noted that he would start and if Senator Goolsby or others wanted to chime in to do so. In his case, it is really just a matter of who he comes into contact with and how effective I think I could be or how, I'm having to form a judgment often very quickly, about whether there is merit to it, whether I should be involved with it or I'm have the resources and time available at that particular moment. I might have the resources and time available a year from now or a year before but at that particular moment I may not, it wouldn't be fair to my other clients. It's fairly random. I would say my perception and experience with legal aid is that it at least provides some regularly, some ability for them to do a little bit of the initial evaluation and certainly the need base.

Sometimes people say they need things and act they need things when they don't quite have the same need that the next person has. I think that is a real big benefit they provide that I can't, especially in my role now as a Senator, there is not a lot of time that I have to evaluate pro bono cases and so I'm usually getting about a minute conversation with my paralegal and having to make a decision about that. So it's pretty sporadic and pretty ad hoc.

Chairman Boles recognized Representative Stevens who indicated that legal aid actually makes some referrals to her on occasion because she does a lot of domestic law. She further stated that now that she is in the House of Representatives that it is difficult to do much but also through various charitable organizations where she works with the homeless shelter, where I work with the domestic violence center, all of those a lot of times will call and say we have someone who really needs, whether it's legal advice or whether it's actual representation. So we get those kind of referrals, occasionally we just have someone call our office and we try to evaluate whether it's something we can do or have the time. We can't represent everyone who needs us all the time but we are all encouraged to do a lot of volunteer work and I think most of us really try to do through the various places.

Representative Faircloth noted that his questions were answered and thanked members for their response.

Chairman Boles asked Mr. Brinkley to introduce his three executives and perhaps say something and the work they do. First, Mr. Brinkley, responding to Representative Faircloth's question, noted that the NC State Bar has a rule, Rule 6.1, which says that all lawyers must aspire to render 50 hours of pro bono service every year. He further stated that most lawyers he knows take that quite seriously. He then recognized the 3 executive directors. The first, Mr. Housen who the members have already met. Ken Shore of Legal Services of the Southern Piedmont and Jim Barrett of Pisgah Legal Services in Buncombe County as well.

Chairman Boles recognized these gentlemen for comment. Jim Barrett from Pisgah Legal Services pointed out that the legislature was leveraging other funding for this work. The state funding for his organization is about 15% so they are leveraging that many times and it helps them do a lot more. The pro bono value gets leveraged too so he just wanted to let everyone know that it is really an efficient way of serving a lot of people but they can help so many more people with a little more investment. Ken Shore from Southern Piedmont in Charlotte thanked the committee and indicated they wanted them to understand that they are a vastly underfunded small, underpaid and outnumbered system trying to provide access to the civil justice system for low income people in this state. He indicated that there are almost 20,000 eligible people for each of their staff attorneys and even with the extensive pro bono work from the private lawyers, they are really outnumbered however, they do very much appreciate the support the legislature has given them and maybe improve that a little. He understands that we are in difficult times and thanked the committee. George Housen from Legal Aid of NC noted that his agency serves all 100 counties and thanked Chairman Boles for putting them on the agenda. He then expressed thanks for the support they receive and echoed the comments of his colleagues that, like everyone else, would hope that they can get a better investment of the clients they serve. They are serving 25,000 – 30,000 clients each year and most of them are children in those households and it is an important investment for the legislature to make and thanked the committee for taking this on.

Chairman Boles opened the floor for questions from any of these gentlemen and recognized Representative Faircloth. He referred back to Representative Spear's question about whether or not any costs are recovered for services by legal aid. He asked that in the event a person was wronged in some civil way, and they came to legal aid for assistance, and the court found against the person who did the wrong to them; is it against any kind of rules or anything that you have that some amount be collected from that person who did the wrong to help in providing services with legal aid? Mr. Housen was recognized by Chairman Boles to respond and he noted that unless they go to extensive litigation, they typically do not try to collect attorney's fees or take any part of the judgment from our client. We are not trying, there isn't really enough out there to fund the organization off the attorney's fees. The big impact cases that we are able to do on occasion, we usually try to involve firms like Martins and others and they don't go after the fees either. We are there to try and get justice in a sense and fairness for our clients. Typically these aren't the types of cases that are gonna earn a lot of attorney fees and in all candor, in the cases where we are making it rough on the other side, it's generally those adversaries are calling your offices and complaining about why are you funding these people who are making my life so miserable and it doesn't behoove us to really try to get blood out of a turnip on these attorney fees. We can get them and again, unless they really put us to the test and use our resources, it just doesn't make sense for us to be deliberative in going after those fees.

Chairman Boles asked if there were any other questions and asked Mr. Brinkley if he had any additional comments. He noted that he did not and thanked the committee for allowing them to come.

Chairman Boles noted that this would conclude our meeting and thanked Judge John Smith from the Administrative Office of the Courts for attending the meeting and asked him if he had comments for the committee. Judge Smith indicated that their office is always available to help and

expressed appreciation for Senator Goolsby's comments. He stated that the whole issue about the credit card business arose because he thought it was absurd for clerk's not to take credit cards to start with and he thought the approach they were taking was the appropriate way to get into it because the first comments he heard were that it was absurd to be able to do all the things you can do with a credit card and not pay a traffic ticket. They saw a way to do that while they were suffering the cuts. Going beyond that, he noted that they collect \$700.000.000.00 and that if everybody went to a credit card, the cost for the fees alone would be \$24,000.000.00 and they could not absorb that kind of cut but if they could find a source of funding, they are committed to have credit cards in every clerk's office as soon as we can do it.

Chairman Boles thanked Judge Smith for his comments and recognized Senator Kinnaird who stated that while she thinks this is a good solution to a problem that we do have to remember that people will get points, we somehow have to put those two things together and solve that problem whereas you go to court and you plead, and whatever, and you're assigned to a traffic school, you don't pay that penalty, so I think they have got to be coupled together.

Chairman Boles thanked Senator Kinnaird and adjourned the meeting at 4:04 p.m.

Respectfully Submitted,

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Jamie L. Boles, Chairman

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Kerry L. Guice, Clerk